Document No. 4418
Voted at Meeting of 3/15/84

Re: Harbor Towers "Second Phase"
Land Disposition Agreement of July 17, 1969

The Boston Redevelopment Authority has recently been approached by First City Development Corp. of Boston which purports to be a conditional assignee of all of the right, title and interest of Boston Waterfront Associates I in the so-called "second Phase" Harbor Towers Land Disposition Agreement between the Authority and Boston Waterfront Associates I, concerning parcel 3T of the Downtown-Waterfront-Faneuil Hall Urban Renewal Project (Mass. No. R-77), and executed by Boston Waterfront Associates I on July 17, 1969. Indeed, First City has brought an action in the Superior Court for Suffolk County to press its alleged rights under the Agreement.

The Boston Redevelopment Authority has long considered second phase LDA to have lapsed, and believes that no party, neither Boston Waterfront Associates nor any purported conditional assignee of Boston Waterfront Associates, has any rights remaining thereunder. The Authority takes this position for several reasons. First, the changing needs and planning requirements of the renewal area after fifteen years have made the original object of the agreement (a third rental-housing residential tower) no longer desirable. Second, the passage of the same fifteen-year time period exceeds by a factor of two-and-one-half times the original limitation of the agreement, which contemplated construction within six years of execution. Third, the terms of the Land Disposition Agreement and the actions of the redeveloper Boston Waterfront Associates I clearly indicate that the redeveloper's rights have lapsed, been abandoned, or rendered impossible of performance. Boston Waterfront Associates I, by conveying the first two apartment towers and parcel 3T(a), an integral portion of the site of the third tower, to unrelated parties has thereby abandoned its interest in development on the Boston Waterfront. This conveyance rendered Boston Waterfront Associates incapable of proceeding with the second phase of construction. Since the conveyance came six years after the outside date contemplated in the agreement for a construction start, it was merely a confirmation of what both parties already accepted: that the second phase agreement was a dead letter.

It is the Authority's position, then, that there are no existing rights under the contract belonging either to Boston Waterfront Associates or to its purported conditional assignee. Further, since it is the Authority's belief that the agreement has been long since abandoned and is of no remaining force or effect, the Authority will not entertain any request by Boston Waterfront Associates at this late date for approval of any assignment of its rights under the agreement. In addition, since there is no privity between the Authority and the purported conditional assignee, the Authority will not entertain any request from the purported conditional assignee for such approval.

The Authority is hereby preserving all the Authority's rights and remedies under the Land Disposition Agreement arising out of any default of the Redeveloper under said Land Disposition Agreement.

LEG6/F/031484

MEMORANDUM MARCH 15, 1984

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: WATERFRONT PROJECT, MASS. R-77, AUTHORIZATION CONCERNING THE JULY 17, 1969 LAND DISPOSITION AGREEMENT REGARDING THE SO-CALLED THIRD HARBOR TOWER SITE

The Boston Redevelopment Authority has recently been approached by First City Development Corp. of Boston, which purports to be a conditional assignee of all of the right, title and interest of Boston Waterfront Associates I in the so-called "second phase" Harbor Towers Land Disposition Agreement between the Authority and Boston Waterfront Associates I, concerning Parcel 3T of the Downtown Waterfront-Faneuil Hall Urban Renewal Project (Mass. R-77), and executed by Boston Waterfront Associates I on July 17, 1969. Indeed, First City has brought an action in the Superior Court for Suffolk County to press its alleged rights under the Agreement.

The Boston Redevelopment Authority has long considered the second phase LDA to have lapsed and believes that no party, neither Boston Waterfront Associates nor any purported conditional assignee of Boston Waterfront Associates, has any rights remaining thereunder. The Authority takes this position for several reasons. First, the changing needs and planning requirements of the renewal area after fifteen years have made the original object of the agreement (a third rental-housing residential tower) no longer desirable. Second, the passage of the same fifteen-year time period exceeds by a factor of two-and-one-half times the original limitation of the Agreement, which contemplated construction within six years of execution. Third, the terms of the Land Disposition Agreement and the actions of the redeveloper, Boston Waterfront Associates I, clearly indicate that the redeveloper's rights have lapsed, been abandoned, or rendered impossible of performance. Boston Waterfront Associates I, by conveying the first two apartment towers and Parcel 3T(a), an integral portion of the site of the third tower, to unrelated parties has thereby abandoned its interest in development on the Boston waterfront. This conveyance rendered Boston Waterfront Associates incapable of proceeding with the second phase of construction. Since the conveyance came six years after the outside date contemplated in the Agreement for a construction start, it was merely a confirmation of what both parties already accepted: that the second phase Agreement was a dead letter.

It is the Authority's position, then, that there are no existing rights under the contract belonging either to Boston Waterfront Associates or to its purported conditional assignee. Further, since it is the Authority's belief that the Agreement has long since been abandoned and is of no remaining force or effect, the Authority will not entertain any request by Boston Waterfront Associates at this late date for approval of any assignment of its rights under the Agreement. In addition, since there is no privity between the Authority and the purported conditional assignee, the Authority will not entertain any request from the purported conditional assignee for such approval.

It is recommended that the Authority inform all parties of interest that there are no existing rights under the contract belonging either to Boston Waterfront Associates nor to its purported conditional assignee.

An appropriate vote follows:

VOTED: That the Authority hereby authorizes the Director to inform all interested parties that there are no existing rights under the Land Disposition Agreement by and between Boston Redevelopment Authority and Boston Waterfront Associates I, Downtown Waterfront Faneuil Hall Project No. Mass. R-77, Parcel 3T, belonging either to Boston Waterfront Associates or its purported conditional assignee, said letter to be substantially in accordance with the form attached hereto and said letter, by its terms, shall preserve all the Authority's rights and remedies under the Land Disposition Agreement arising out of any default of the redeveloper under said Land Disposition Agreement.